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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 HELPING HANDS WELLNESS  
8 CENTER, INC.,

9 Plaintiff(s),

10 v.

11 LUSINE DANAYAN, et al.,

12 Defendant(s).

Case No. 2:19-CV-881 JCM (NJK)

ORDER

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14 Presently before the court is Helping Hands Wellness Center, Inc.'s ("HHWC")  
15 emergency motion to remand. (ECF No. 5). Defendants Lusine Danayan and Jack Danayan  
16 ("defendants") responded. (ECF No. 12). HHWC did not reply.

17 Also before the court is Helping Hand's motion for preliminary injunction. (ECF No. 6).  
18 Defendants filed a response. (ECF No. 15). HHWC did not reply.

19 **I. Facts**

20 HHWC, a medical cannabis cultivation and production operation in North Las Vegas  
21 licensed under state law, received a confidential offer for the sale of its cannabis cultivation and  
22 production assets from a buyer.<sup>1</sup> (ECF No. 5 at 2). HHWC discussed the offer with defendants,  
23 who initially consented to the terms of the sale. *Id.* HHWC then entered into a letter of intent  
24 with the buyer. *Id.* Before the execution of the sale agreement, however, a dispute between  
25 defendants and HHWC arose. *Id.* at 2–3.

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27  
28 <sup>1</sup> HHWC stresses that the shareholder interest purchase agreement and settlement are  
confidential. (*See* ECF No. 5 at 3 n.2).

1 Defendants and HHWC negotiated for several months, and HHWC alleges that the  
2 parties “reached an agreement on all material terms resolving their dispute.” *Id.* at 3. The parties  
3 drafted a settlement and shareholder interest purchase agreement whereby HHWC would  
4 purchase Lusine’s interest, Lusine would resign as an officer of HHWC, and HHWC would  
5 execute five (5) promissory notes and a security agreement to repay Lusine. *Id.* However,  
6 defendants assert that the parties “were ultimately unable to reach an agreement as to the terms  
7 of the sell [sic], such as the amount to be paid, how that amount was to be paid, and the backed  
8 security interest should [HHWC] default.” (ECF No. 15 at 8).

9 HHWC filed suit in state court to enforce the settlement and shareholder interest purchase  
10 agreement, and the defendants timely removed. (ECF No. 1).

## 11 **II. Legal Standard**

### 12 *A. Subject matter jurisdiction*

13 Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the  
14 district courts of the United States have original jurisdiction, may be removed by the defendant  
15 or the defendants, to the district court of the United States for the district and division embracing  
16 the place where such action is pending.” 28 U.S.C. § 1441(a). “A federal court is presumed to  
17 lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc.*  
18 *v. Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

19 Upon notice of removability, a defendant has thirty days to remove a case to federal court  
20 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*  
21 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not  
22 charged with notice of removability “until they’ve received a paper that gives them enough  
23 information to remove.” *Id.* at 1251.

24 Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s  
25 receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts  
26 necessary for federal court jurisdiction.” *Id.* at 1250 (quoting *Harris v. Bankers Life & Casualty*  
27 *Co.*, 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original)). “Otherwise, the thirty-day  
28 clock doesn’t begin ticking until a defendant receives ‘a copy of an amended pleading, motion,

1 order or other paper’ from which it can determine that the case is removable. *Id.* (quoting 28  
2 U.S.C. § 1446(b)(3)).

3 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. §  
4 1447(c). On a motion to remand, the removing defendant faces a strong presumption against  
5 removal, and bears the burden of establishing that removal is proper. *Sanchez v. Monumental*  
6 *Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67  
7 (9th Cir. 1992).

8 *B. Preliminary injunction*

9 This court must consider the following elements in determining whether to issue a  
10 temporary restraining order and preliminary injunction: (1) a likelihood of success on the merits;  
11 (2) likelihood of irreparable injury if preliminary relief is not granted; (3) balance of hardships;  
12 and (4) advancement of the public interest. *Winter v. N.R.D.C.*, 555 U.S. 7, 20, 129 S. Ct. 365,  
13 172 L. Ed. 2d 249 (2008); *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994);  
14 Fed. R. Civ. P. 65 (governing both temporary restraining orders and preliminary injunctions).

15 The party seeking the injunction must satisfy each element; however, “the elements of the  
16 preliminary injunction test are balanced, so that a stronger showing of one element may offset a  
17 weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th  
18 Cir. 2011). “Serious questions going to the merits and a balance of hardships that tips sharply  
19 towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also  
20 shows that there is a likelihood of irreparable injury and that the injunction is in the public  
21 interest.” *Id.* at 1135 (internal quotations marks omitted).

22 Finally, to obtain injunctive relief, plaintiff must show it is “under threat of suffering  
23 ‘injury in fact’ that is concrete and particularized; the threat must be actual and imminent, not  
24 conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant;  
25 and it must be likely that a favorable judicial decision will prevent or redress the injury.” *Ctr. for*  
26 *Food Safety v. Vilsack*, 636 F.3d 1166, 1171 (9th Cir. 2011) (quoting *Summers v. Earth Island*  
27 *Inst.*, 555 U.S. 488, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009)).

28 . . .

1     **III.     Discussion**

2             *A.   Subject matter jurisdiction—diversity*

3             First, the parties do not dispute that there is diversity of citizenship. (ECF Nos. 1, 5, 12).  
4     Defendants are residents of California. (ECF No. 1 at 9–10). HHWC is a Nevada corporation,  
5     with its principal place of business in Nevada. *Id.* at 9. Thus, complete diversity exists between  
6     the parties.

7             The only issue before the court is whether the amount in controversy satisfies 28 U.S.C.  
8     § 1332, which allows federal courts to exercise diversity jurisdiction in civil actions between  
9     citizens of different states where the amount in controversy exceeds \$75,000. *See* 28 U.S.C.  
10    § 1332(a). “In determining the amount in controversy, courts first look to the complaint.  
11    Generally, ‘the sum claimed by the plaintiff controls if the claim is apparently made in good  
12    faith.’” *Ibarra v. Manheim Invests., Inc.* 775 F.3d 1193, 1197 (9th Cir. 2015) (citing *St. Paul*  
13    *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). At the time of removal, parties  
14    may submit supplemental evidence to show that the amount in controversy is in excess of  
15    \$75,000. *Id.* (citing *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).  
16    However, if the plaintiff seeks nonmonetary relief, “removal of the action is proper on the basis  
17    of an amount in controversy asserted” by the defendant “if the district court finds, by the  
18    preponderance of the evidence, that the amount in controversy exceeds [\$75,000].” 28 U.S.C.  
19    § 1446(c)(2)(B); *see also Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81  
20    (2014).

21            Plaintiffs allege in the complaint that their claims are each valued in excess of \$10,000 in  
22    general damages. (ECF No. 1 at 15). This figure is well below the amount in controversy  
23    threshold under § 1332(a). However, plaintiff is suing for nonmonetary relief: specific  
24    performance of the settlement and purchase agreement. (ECF No. 1 at 16). Defendants contend  
25    that, under the confidential settlement and shareholder interest purchase agreement, HHWC  
26    would buy defendant’s interest in HHWC for over \$2,000,000. (ECF No. 12 at 7). HHWC’s  
27    shareholder interest purchase agreement, although filed under seal and stricken by the court on  
28

1 procedural grounds, confirms that the amount in controversy—the purchase price—exceeds  
2 \$75,000. (*See generally* ECF No. 7).

3 Thus, the court finds by a preponderance of the evidence that the amount in controversy  
4 exceeds \$75,000. HHWC’s motion to remand is denied.

5 *B. Preliminary injunction*

6 In Nevada, “[a] preliminary injunction is proper where the moving party can demonstrate  
7 . . . that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory  
8 damages would not suffice.” *Excellence Cmty. Mgmt., LLC v. Gilmore*, 351 P.3d 720, 722 (Nev.  
9 2015); see also NEV. REV. STAT. § 33.010.

10 HHWC fails on this prong of the preliminary injunction analysis. HHWC alleges in its  
11 motion for preliminary injunction that “without the resolution and [s]ettlement of the matters  
12 between HHWC and Lusine, the purchaser of the certain cultivation and production assets will  
13 not complete the transaction.” (ECF No. 6 at 9). Thus, HHWC argues that its irreparable harm  
14 is “[l]osing the purchase of the assets . . . because the sale and its terms are uniquely structured  
15 and will not be attainable through another buyer because shares in the instant purchaser will also  
16 be issued to HHWC.” *Id.*

17 “However, on June 24, 2019, counsel for the purchaser sent a letter to HHWC's counsel  
18 and informed HHWC that they have terminated the asset purchase agreement with HHWC.”  
19 (ECF No. 15 at 11, Exhibit A). Accordingly, HHWC’s imminent, irreparable harm has already  
20 occurred.

21 Further, defendants argue that “[HHWC] has not shown that it will suffer irreparable  
22 harm because [HHWC] has not shown that compensatory damages are an inadequate form of  
23 compensation. In fact, [HHWC’s] [i]nstant [m]otion fails to mention compensatory damages and  
24 merely states that [HHWC] will suffer irreparable harm.” (ECF No. 15 at 11). The court agrees.

25 HHWC’s only argument pertaining to the irreparable harm and inadequacy of a remedy  
26 at law is the uniqueness of the sale and its terms. (ECF No. 6 at 9). This assertion is  
27 unsupported by specific evidence, ostensibly because the terms of the sale are confidential.  
28

1 Nonetheless, the court does not find reason to believe—particularly in light of the sale already  
2 being terminated—that compensatory damages are inadequate.

3 Accordingly, HHWC’s motion for preliminary injunction is denied.

4 **IV. Conclusion**

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that HHWC’s emergency  
7 motion to remand (ECF No. 5) be, and the same hereby is, DENIED.

8 IT IS FURTHER ORDERED that HHWC’s motion for preliminary injunction (ECF No.  
9 6) be, and the same hereby is, DENIED.

10 DATED August 29, 2019.

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UNITED STATES DISTRICT JUDGE